CASE SUMMARY

Complaint against Buildings Department for impropriety in handling the repair of a party wall

The Complaint

An estate management company (EMC), on behalf of an Owners' Corporation (the Complainant), complained that the Buildings Department (BD):

(a) had wrongly held the Complainant as the owner of a party wall and failed to respond to its request for clarification of ownership; and

(b) changed its views on the structural safety of the party wall when Government was found to be the owner.

Sequence of Events

2. During a routine inspection of a party wall in December 1998, BD found some minor defects, but without imminent structural danger. In January 1999, BD issued an advisory letter to the Complainant, requiring necessary repair.

3. EMC wrote to BD in March 1999 for assistance in clarifying the ownership of the party wall; and in June and September 1999 expressed concern over its structural safety.

4. During another inspection in September 1999, BD found some minor defects on the party wall, but still with no imminent structural danger. Furthermore, BD noted that the profile of the party wall on site differed from that on the approved plan. BD then discovered that the party wall stood partly on an area surrendered to Government for road widening in 1988.

5 BD then inquired Lands Department about the land status and maintenance responsibility of the party wall. Meanwhile, BD reaffirmed to EMC that there was no immediate structural danger of the party wall and also advised that no further action would be contemplated.

6 Lands Department addressed BD regarding its enquiry but BD did not reply or pursue the matter further. In June 2001, upon referral of the matter by a District Office, BD resumed correspondence with Lands Department about the maintenance responsibility of the party wall.

7 In October 2001, upon request of BD, Lands Department advised EMC that there was prima facie evidence that the exposed portion of the party wall was within Government land. In April 2002, Lands Department carried out repair of the party wall.

Observations and Opinions

8 BD explains that only when a statutory order is issued under the Buildings Ordinance that ownership check is required. Advisory letters are normally served to urge for timely action, such as repairs and maintenance. Non-statutory in nature, they do not have to be served on named owners, but to the management or incorporated owners of the building concerned.

9 Regarding the request of EMC for clarification of the ownership of the party wall, BD simply did not respond. However, even just for common courtesy and good administrative practice, BD should have responded after examining the relevant land status records: certainly in October 1999, if not in March 1999. There was, therefore, undue delay in reply.

10 As for its views on the structural safety of the party wall, BD has contended that ownership of the party wall in no circumstances featured in any assessment of its safety condition and that it had never changed its views. Assessment of structural safety involves professional judgement, which is outside our jurisdiction. However, this Office notes that BD's assessment was consistent throughout, i.e. that the party wall had shown no signs of immediate structural concern and required only minor repairs.

Conclusion and Recommendation

11 The Ombudsman considers this complaint to be partially substantiated.

12 This Office considers it important to verify ownership before an advisory letter is sent.

13 The Ombudsman urges BD to expedite implementation of Government's plan to give advisory letters statutory status for more effective deterrent against illegal structures. This Office recommends that BD examine the feasibility of extending this measure beyond illegal structures to cover general building safety and maintenance as well.

Comments from BD

14 BD concurs with our conclusions. Implementation of its Building Condition Information System should greatly assist in avoiding recurrence of similar incident.

15 BD is taking steps to amend the law to upgrade advisory letters related to unauthorized building works to statutory warning notices, registrable against

property titles. BD will explore the feasibility of extending this concept to advisory letters for building defects.

16 BD is also reviewing the need to verify ownership before issuing an advisory letter requiring building repair. BD will remind staff to pay particular attention to structures straddling across different lots and to confirm land status and maintenance responsibility where necessary.

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